

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WOTC
	CORRESPONDENCE SYMBOL OWI
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 21-10

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS
ALL REGIONAL WOTC COORDINATORS

FROM: JANE OATES
Assistant Secretary *Jane Oates*

SUBJECT: End Date for the Work Opportunity Tax Credit (WOTC) American Recovery and Reinvestment Act of 2009 (Recovery Act) Temporary Target Groups

1. **Purpose.** To inform the State Workforce Agencies (SWAs) of the end date of the legislative authority for the two WOTC temporary groups created by the Recovery Act, and provide guidance on procedural activities beyond December 31, 2010.
2. **References.** The American Recovery and Reinvestment Act of 2009 (Public Law 111-5, Recovery Act); Internal Revenue Code of 1986, Section 51, as amended; Internal Revenue Service Notices 2009-69, dated August 31, 2009 and 2009-28, 2009-24 I.R.B 1082, dated June 15, 2009; Training and Employment Guidance Letter (TEGL) 03-09, Information and Guidance on the Two New Work Opportunity Tax Credit (WOTC) Targeted Groups Introduced by the Recovery Act, dated September 1, 2009 ; TEGL No. 11-08, Extension of the Information Collection for the Consolidated Work Opportunity Tax Credit (WOTC) Program: Revised Reporting and Processing Forms, dated February 19, 2009; TEGL No. 11-08, Change 1, Extension Period Granted to all State Workforce Agencies (SWAs) and Employers for the Uninterrupted Use of All 2007 Work Opportunity Tax Credit (WOTC) Processing Forms, dated March 25, 2009; ETA Handbook 408, November 2002, Third Edition (the Handbook); and the updated August 2009 Addendum to the Handbook (Addendum, OMB No. 1205-0371).

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3. **Background.** On February 17, 2009, President Obama signed into law the Recovery Act. Section 1221 of the Recovery Act amended § 51 of the Internal Revenue Code (IRC) by adding a new section § 51(d) (14). This new section added Unemployed Veterans and Disconnected Youth as two new WOTC target groups for a temporary period of time. On June 15, 2009, the Internal Revenue Service (IRS) published Notice 2009-28, announcing these two new groups to the SWAs and the business sector and setting forth the statutory definitions and eligibility requirements for individuals who began work for an employer after December 31, 2008, and before January 1, 2011. On August 31, 2009, the IRS published Notice 2998-69 clarifying the definition of eligibility criterion four for the Disconnected Youth group and extending the initial transition relief period through October 17, 2009, for employers to submit the Pre-Screening Notice (IRS Form 8850) requesting certification for these two groups to the SWAs.
4. **Information and Processing Guidance.** The period in which a new hire could qualify for one of the two Recovery Act target groups - Unemployed Veterans and Disconnected Youth - ended at midnight, December 31, 2010. The following guidance is provided to ensure a smooth and uniform closeout processing procedure for certification requests received for these two temporary groups through and beyond December 31, 2010.

Guidance for handling certification requests filed by January 31, 2011 for employment that started prior to and up to December 31, 2010.

SWAs are to continue to process all timely filed certification requests submitted for members of these two temporary groups who have an employment start date on or before December 31, 2010. Employers and their representatives are required by law to submit the pre-screening notice and certification request no later than 28 days after the employment start date. The Department has issued special guidance for timeliness when the last day of the 28-day period ends on a Saturday, Sunday, or legal holiday. This guidance permits employers of target group members with a work start date of December 31, 2010, to submit their certification requests no later than January 31, 2011. See the special rules for timeliness for weekends and holidays in Section G. 1. and 2., Chapter VII of the November 2002, Third Edition of ETA Handbook 408 and the deadline for applications in the August 2009 Addendum.

Guidance for handling certification requests filed any time for employment that started after December 31, 2010.

Even though the authorization for the Unemployed Veteran and Disconnected Youth target groups has ended, it is not uncommon for legislation to be passed reauthorizing WOTC credits and allowing retroactive certifications. During prior "hiatus periods," the Employment and Training Administration (ETA) has instructed States to accept applications (certification requests) in anticipation of a

retroactive reauthorization. To accommodate a potential retroactive reauthorization for these two Recovery Act groups, ETA is instructing the SWAs to continue to accept applications for the two expired target groups after December 31, 2010, but to hold off on processing the requests pending further legislative action and guidance from ETA. States must conduct the following program activities in this interim period until ETA provides further guidance:

Mandatory Procedure:

- States must accept, date stamp, log, and retain timely filed **certification requests** for employers' new hires in the Unemployed Veteran and Disconnected Youth target groups with work start dates on or after January 1, 2011, until informed otherwise by ETA.
- Those States that have issued denials on filed certification requests for these two groups for workers who started employment after December 31, 2010, are instructed to accept, date stamp, log, and retain **all appeals** received pending further guidance from ETA.

Voluntary Procedures:

- States with sufficient resources may conduct all steps necessary to process certification requests for these two expired groups up to, but not including, issuance of the actual certification or denial. States must not issue certifications or denials in this interim period.

5. **Reporting and Administrative Responsibilities.** Pursuant to the Paperwork Reduction Act of 1995, the Office of Management and Budget approved the current information collection for the WOTC program administrative and reporting forms (i.e., ETA Report Form 9058 – Report 1 and ETA Administrative Forms 9061-9063, and 9065 (OMB No. 1205-0371)) through November 2011. States are instructed to continue to use these processing and reporting forms and accept from employers ETA Form 9061 until receipt of further instructions from ETA.

6. **Action Requested.** State Administrators are requested to:

- a) Provide this information to all appropriate WOTC program staff, employers and their representatives, participating agencies (PAs) and other interested partners;
- b) Ensure that the SWAs and PAs administer these provisions in accordance with the guidance in this TEGL, ETA Handbook 408, the August 2009 Addendum to the Handbook, and the Internal Revenue Code of 1986, Section 51, as amended; and

- c) Inform employers and their representatives of the procedures for handling certification requests of new hires in the Recovery Act's two temporary target groups that began to work for an employer **after** December 31, 2010, the expiration date for these groups. Employers should be notified, however, that although Congress has provided for retroactive certification in the past, certifications of employers' new hires for these two groups will not be provided by the States unless and until Congress acts.

7. **Inquiries.** Direct all questions to the WOTC Regional Coordinators.